UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
v.	)	Criminal No. 98-0057 (PLF)
MARIA HSIA,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

At the close of the government's case in chief at trial, the defendant moved for judgment of acquittal on all five counts of the indictment. In an oral ruling, the Court denied defendant's motion with respect to Counts 1, 2 and 5, but reserved ruling on the motion with respect to Counts 3 and 4. In addition to those reserved portions of the original motion, the Court now has before it defendant's post-trial motion for judgment of acquittal or alternatively for arrest of judgment, the government's opposition, defendant's reply, defendant's supplemental motion for judgment of acquittal and the government's response. Upon consideration of the briefs and the arguments of counsel at a hearing on this matter, as well as the entire record in this case, the Court denies defendant's motion for judgment of acquittal or for arrest of judgment.

I. STANDARDS

Under Rule 29(a) of the Federal Rules of Criminal Procedure, a court shall enter a judgment of acquittal "if the evidence is insufficient to sustain a conviction" of the charged offenses. The standard for overturning a guilty verdict on the grounds of insufficiency of the evidence is "a demanding one." United States v. Lam Kwong-Wah, 924 F.2d 298, 302 (D.C. Cir. 1991). A conviction should be reversed only where, after viewing the evidence in the light most favorable to the prosecution, the Court concludes that "[no] rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 and n.11 (1979) (citing Curley v. United States, 160 F.2d 229, 232-33 (D.C. Cir.), *cert. denied*, 331 U.S. 837 (1947)). In ruling on a motion for judgment of acquittal, the Court must give "full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact . . . . [I]f there is no evidence upon which a reasonable mind might fairly conclude guilt beyond reasonable doubt, the motion must be granted." Curley v. United States, 160 F.2d at 232-33.

Rule 34 of the Federal Rules of Criminal Procedure requires that a court, upon timely motion of a defendant, "arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged."

II. ANALYSIS

The defendant Maria Hsia argues that the evidence presented by the government at trial was insufficient to sustain a conviction on any of the five counts with which she was charged. During trial, the Court found that the government had presented sufficient evidence to sustain a conviction on Counts 1, 2 and 5, but reserved ruling on whether the evidence was sufficient to convict her on Counts

3 and 4. See Trial Transcript ("Tr.") at 2131-2204. In reserving ruling on the motion with respect to those two counts, the Court expressed particular concern about whether political committee treasurers had a duty to inform the Federal Election Commission ("FEC") of the "true source" of the reported funds or the "true contributors." See Tr. at 2184-86. This issue now has been briefed both by the government prosecutors in this case and by the Federal Election Commission as *amicus curiae*.[1]

In her post-trial motion for judgment of acquittal, the defendant argues that (1) the government failed to prove that any "statements" were ever made by any political committee to the FEC; (2) even if there is evidence that statements were made, there is insufficient evidence that any such statements were false; and (3) even if false statements were made, there is insufficient evidence to prove that Ms. Hsia knew that the statements were false or that she knowingly caused them to be false. Ms. Hsia also argues that there was a fatal variance between the conduct charged in the indictment and that proved at trial in violation of her Fifth Amendment right to due process; she asserts that she was forced to defend herself at trial against a charge of concealment, which is different from the causing false statements offense charged in the indictment. Finally, Ms. Hsia argues that the FEC, and thus this Court,

lacked jurisdiction over the alleged conduct in this case, and that the jury's verdict therefore must be arrested under Rule 34 of the Federal Rules of Criminal Procedure.

The government responds that the evidence it presented at trial was more than sufficient

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[1] The Court invited the FEC to file an *amicus* brief "with respect to its interpretation" of the Federal Election Campaign Act of 1971, as amended, and the FEC regulations, "most particularly with respect to those provisions that provided the context for this prosecution and/or were included in the Court's instructions to the jury." Order of April 6, 2000.

to sustain Ms. Hsia's conviction on each of the five charged offenses, that there was no fatal variance and that both the FEC and the Court had jurisdiction. It submits that the Court therefore should deny both prongs of defendant's motion and those portions of defendant's mid-trial motion for judgment of acquittal that the Court held in abeyance. Applying the standards set forth in Rules 29 and 34 and the relevant case law, and recognizing that the Court is bound by — and the trial of this case was governed by — the law as announced by the court of appeals in United States v. Hsia, 176 F.3d 517 (D.C. Cir. 1999), *cert. denied*, 120 S. Ct. 978 (2000), and United States v. Kanchanalak, 192 F.3d 1037 (D.C. Cir. 1999), the Court must deny defendant's motions.

A. Whether False Statements Were Made And Ms. Hsia Knew Of Their Falsity

The government's theory of prosecution, as expressed in the indictment and in the bill of particulars, was that each political committee report submitted to the FEC contained names of contributors and that the names listed purported to be the true or actual contributors when in fact they were not, that the listed names constituted "statements" that were false because the names were not those of the true contributors, and that Ms. Hsia knew the false statements would be made by the political committees and knowingly took steps to cause these false statements to be made. Each count of the indictment states that she "knowingly and willfully caused the submission of a material false statement to the FEC, in that defendant Hsia caused . . . a federal political committee . . . to file with the FEC a report for [the political committee] that listed the following individuals (identified below by check number) as contributors to [the political committee] . . . when, as defendant Hsia knew, in truth and in fact, the individuals named in the report were not the actual contributors," Indictment ¶¶ 10, 13, or when she "knew, in truth and in fact, the contributions had been made by IBPS [the International

Buddhist Progress Society or the Hsi Lai Temple]." Indictment ¶¶ 18, 24, 31. In the bill of particulars, the government not only reiterated the name of each person falsely identified as a contributor, together with the check number identified with that individual, but also specified the manner in which the defendant "caused" the identification of that person as the true contributor. See Bill of Particulars at 13-20. The government's proof at trial generally conformed to the specifics of the bill of particulars.

The government proved at trial that these statements were made by introducing portions of the relevant FEC reports in evidence and offering circumstantial evidence from which the jury could find that the FEC reports were understood to constitute statements of the names of non-prohibited, non-conduit contributors to various campaigns. It also offered direct and circumstantial evidence from which the jury could find that the persons whose names were contained in the reports were reimbursed by prohibited contributors to the campaigns. Since the court of appeals held that the Federal Election Campaign Act requires political committees to report the "true source" of contributions, United States v. Kanchanalak, 192 F.3d at 1039, 1042; United States v. Hsia, 176 F.3d at 523-24, and the jury was so instructed, it was not unreasonable for the jury to find on the basis of the direct and circumstantial evidence presented to it that the statements were made as alleged.[2] While the defendant relies heavily on the testimony of Lois Lerner, Associate General Counsel for Enforcement at the FEC, to the effect that there is nothing in the political committee reports to the FEC stating that the persons named in the reports were or were not the "true sources" of contributions and nothing in the statute or regulations requiring a contributor or donor to tell a political committee whether a contribution is being made in the

[2] The Federal Election Commission in its *amicus* brief stated that it interprets the Federal Election Campaign Act to require political committees to report the true source of their contributions or the identity of the true contributors whenever that information is available to them. FEC's *Amicus Curiae* Brief at 2, 9-13.

name of another or requiring the committee to so advise the FEC, see Tr. at 125, 149, 182, 214-15, the jury was not required to accept her testimony in whole or in part, to give it greater weight than the other direct and circumstantial evidence with which it was presented, or to draw the inferences defendant argues necessarily flow from that testimony. Upon consideration of the entire record, the Court cannot conclude that the jury's judgment on this issue was unreasonable or irrational.

On the issue of falsity, the government properly points out that after the court of appeals' decision in Hsia, the government needed only to prove that the conduit contributors were not the true sources of the reported contributions. See United States v. Hsia, 176 F.3d at 524 ("As the committees here did not report the true sources, their statements would appear to be false"). With respect to Counts 1, 2 and 5, there was substantial direct evidence introduced at trial — much of it from the persons who signed the checks (often in blank) or had others sign checks (also in blank) — that the persons whose names were on the checks were not the true contributors and that they were reimbursed directly or indirectly by Maria Hsia herself. There was also direct and circumstantial evidence that Ms. Hsia handed or otherwise transmitted the checks signed by these conduits or reimbursed contributors to representatives of various political committees. With respect to Counts 3 and 4, the evidence presented was more circumstantial than direct, but it was sufficient to support the jury's verdict. See *infra* at 7-8.

As in all criminal cases, a defendant's knowledge and intent cannot be proven directly but must be proven through circumstantial evidence and legitimate inferences drawn from the evidence. In this case, the government introduced substantial evidence at trial of Ms. Hsia's knowledge of federal campaign reporting requirements and procedures, of her knowledge that particular conduit contributors

were not the true sources of the contributions, and that when she handed or transmitted the checks charged in the indictment to representatives of political committees she knew that the persons whose names appeared on the checks would be reported as the true contributors. The evidence introduced, together with the Rule 404(b) evidence, was sufficient for the jury to find that Ms. Hsia knew that the statements made were false and that she knowingly caused them to be made.

B. Counts 3 And 4

At trial, the Court reserved ruling on the defendant's motion for judgment of acquittal with respect to Counts 3 and 4. Count 3 charged Ms. Hsia with causing false statements to be made in connection with a fund-raising event for President Clinton on February 19, 1996, at the Hay Adams Hotel. Count 4 charged Ms. Hsia with causing false statements to be made in connection with an event involving Vice President Gore on April 29, 1996, at the Hsi Lai Temple.

Upon careful review of the testimony presented at trial — particularly the testimony of John Huang and Matthew Gorman — and various checks and photocopies of checks found in Ms. Hsia's files that were admitted in evidence, and viewing the evidence and the reasonable inferences therefrom in the light most favorable to the government, the Court cannot conclude that it was unreasonable for the jury to find beyond a reasonable doubt that Ms. Hsia engaged in conduct that caused false statements to be made to the FEC by the Democratic National Committee in connection with the February 19 and April 29 events and that she therefore was guilty of the offenses charged in Counts 3 and 4. See Govt's July 7, 2000, Opposition to Defendant's Motion for Judgment of Acquittal at 21-25 (summary of testimony in support of Counts 3 and 4). To the extent the Court was concerned with the "true source" issue and the hard money/soft money distinction in the statute and

regulations, the *amicus* brief filed by the FEC sets forth that agency's long-held views, and the court of appeals' decisions in Hsia and Kanchanalak are controlling.

C. Variance

As the defendant properly points out, insofar as relevant here 18 U.S.C. § 1001 encompasses two distinct offenses: concealment of a material fact and the making of false statements. The former requires proof of willful non-disclosure by means of trick, scheme or device, while the latter requires proof of actual falsity. The indictment in this case plainly charges the defendant with causing false statements to be made, not concealment. Ms. Hsia argues that the government changed its theory at trial and attempted to prove that she concealed or caused the concealment of true sources, not that she caused the making of false statements as charged in the indictment. This change of theory and proof, according to the defendant, not only required her to have to defend against a case for which she had not prepared, but constituted both a constructive amendment to and a fatal variance from the indictment in violation of the Fifth Amendment.

This Court previously has considered and rejected the defendant's argument that the government presented a concealment case rather than a causing false statements case. See Tr. at 2165, 2176-81. The use by the government of the words "conceal" and "scheme" in its opening statement and closing argument, when viewed in context, did not change the government's theory at the last moment or the fact that the government's evidence at trial conformed with the charges contained in each of the five counts of the indictment returned by the grand jury. See Tr. at 44-57, 61-67, 2179-80, 2454, 2462-63. The Court is satisfied that Ms. Hsia was tried on a causing false statements theory, not a concealment theory, and the jury was so instructed. See, e.g., Tr. at 2503 ("[Ms. Hsia] is

not charged with concealment or cover up or using a false writing or document. She is charged with making a materially false statement."); see also Tr. at 2503-08.

D. Jurisdiction

The defendant argues that both the FEC and this Court lacked jurisdiction because (1) the FEC's regulatory scheme does not require the reporting of the "true source" of contributions or the "actual contributors," and (2) the FEC has jurisdiction only over "federal" or "hard" money contributions, not "soft money," and the government failed to prove that the contributions in Counts 3 and 4 were "hard money" contributions. Unfortunately for the defendant, her first argument is foreclosed by the court of appeals' decision in Hsia and her second was effectively decided against her in Kanchanalak.

For all of these reasons, it is hereby

ORDERED that defendant's Motion for Judgment of Acquittal or in the Alternative for Arrest of Judgment [358-1, 391-1, 391-2, 414-1] is DENIED.

SO ORDERED.

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PAUL L. FRIEDMAN
United States District Judge

DATE: